IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2007

CORAM

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

Writ Petition No.1337 of 2003

K.Mahendran .. Petitioner

vs.

1. The Revenue Divisional Officer,
   Thenkasi,
   Tirunelveli Dist.

2. The Assistant Director of Mines,
   Dept. Of Geology and Mines,
   Tirunelveli. .. Respondents

Petitions filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : Mr.M.Sureshkumar
For respondents : Mr.A.Arumugam, AGP.

O R D E R

Writ Petition has been filed praying to issue a writ of certiorari, calling for the records relating to the proceedings in No.A5/7830/02 dated 12.11.2002 of the first respondent, by which seigniorage fee and penalty of Rs.77,115/= has been levied, and to quash the same.

2. The brief facts leading to the filing of the writ petition are as follows :

Pursuant to the tender notification in respect of sand quarry in river poramboke measuring an extent of 10.00.0 hectares in S. Nos.282, 288/1 and 302/2 in Tirumalapuram Village, Sivagiri Taluk, Tirunelveli District, the petitioner was declared as the highest bidder for Rs.1,13,22,000/-. The District Collector, by order dated 20.9.2001, confirmed the auction in favour of the petitioner and granted lease for a period of three years from the said date. Accordingly, the

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petitioner paid the entire bid amount and also a sum of Rs.11,32,200/= towards security deposit and executed the lease agreement. When the petitioner was carrying on quarry operations, the second respondent created problems, whenever he had approached him for the issuance of transport permit and therefore, the petitioner was constrained to file W.P.No.43431/02 for a Mandamus to forbear the second respondent from insisting on production of such recommendations/certificates from various authorities for issuance of transport permits. By order dated 16.12.2002, this Court allowed the writ petition.

3. It is the further case of the petitioner that on the basis of a report of the second respondent alleging that the petitioner had quarried outside the leasehold area, a notice dated 27.7.2002 was issued by the District Collector indicating certain violations committed on the part of the petitioner. The first respondent also issued a notice dated 5.8.2002 stating that the respondents have conducted a joint inspection on 17.7.2002 and found that 159 units of sand had been removed from outside the leasehold area. The petitioner was directed to appear for a personal hearing on 19.9.2002 and the petitioner had appeared for enquiry and offered his explanation. Thereafter, the impugned order was passed, levying seigniorage fee and penalty, in all totalling a sum of Rs.77,115/-, holding that the petitioner had quarried 159 units of sand outside the leasehold area. Challenging the same, the present writ petition has been filed.

4. On behalf of the respondents, a counter affidavit has been filed denying the averments made in the writ petition. It is stated that Condition No.12 of the lease agreement provides for inspection of the lease area by the officials of Mines and Revenue Departments at any time and the accounts can also be verified. As per Condition No.13, the lease area shall be peg-marked correctly and sign boards should also be put up at the main entrance of the quarry. Condition Nos.17 and 18 contemplate that the lessee shall carry out quarrying operation only within the lease area and if any additional area is found to have been quarried, the lease is liable to be cancelled and the government will recover the losses or cost of arbitration, if any, due to quarrying by the lessee in an unauthorized area. The lease agreement also includes penal provisions as well as prosecution for violation of the lease conditions.

5. The respondents have further submitted that as instructed by the District Collector, Tirunelveli, by his proceedings dated 1.7.2002, a Joint inspection was conducted on 17.7.2002 and it was found that the lessee had quarried in S.No.84, which is classified as river poramboke, totalling an extent of 0.54.0 hectares, i.e. outside the lease area measuring 60m x 15m x 0.5m : 159 units. Thereafter, a notice dated 6.8.2002 was issued calling upon the petitioner to submit his explanations during the enquiry on 19.8.2002 and accordingly, the petitioner appeared for enquiry and submitted his explanations. Even

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after submission of explanation, there were many complaints against the petitioner. Therefore, the District Collector, Tirunelveli, inspected the quarry on 30.10.2002 and found that the petitioner had violated condition Nos.13, 30, 32, 18, 40 of the lease agreement. Moreover, on the date of inspection, one Murugesan, a representative of the lessee, informed that 31 lorries/tractors have gone to the quarrying site and there were no records to that effect in the registers.

6. The petitioner was called upon for a personal hearing on 6.1.2002 and he offered his explanation. He was strictly warned and given 15 days' time to rectify the violations pointed out by the Collector that no sand should be transported till 19.11.2002. By order dated 12.11.2002, the explanation offered by the lessee was over-ruled stating that one Murugesan, the representative of the lessee, was present at the time of the Joint inspection held on 17.7.2002 and he agreed with the measurements noted therein. Both the Joint inspection remarks and the statement given by the said Murugesan were considered and the records revealed that unauthorised quarrying was done and 159 units of sand were transported illicitly from S.No.84, i.e., outside the leasehold area. Therefore, the lessee was ordered to pay a sum of Rs.77,115/- under Rule 36(A)(1) of the Tamil Nadu Minor Minerals Concession Rule, 1959. It is further stated that though the lessee was given an opportunity to prefer an appeal before the Collector under Rule 36-C, he has failed to do, and instead, chosen to file the present writ petition without exhausting the alternative remedy available to him, as per the Rules. For the above said reasons, the respondents have prayed for dismissal of the writ petition.

7. Learned counsel for the petitioner submitted that Murugesan, said to be a representative of the petitioner as per the counter affidavit, is in no way connected with the petitioner's quarry and the petitioner's authorised representative is a person by name S. Angappan. Therefore, he submitted that the impugned order, based on the inspection held by the authorities in the absence of either the petitioner or his authorised representative, is illegal and unlawful. He further submitted that the respondents are not empowered to levy penalty equivalent to the cost price of the sand, and as per the Rules, they can levy only seigniorage fee, which comes to about Rs.13,515/-.

8. Learned Additional Government Pleader submitted that as the petitioner has violated the conditions of lease and quarried in an unauthorised area, he is liable for penal action as per the Rules. As the matter involves question of facts, he submitted that this Court need not delve into that aspect.

9. Heard the learned counsel appearing for the parties and

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perused the materials available on record.

10. Before adverting to the facts of the case, it is relevant to extract the provision dealing with penal consequences for violation of the provisions of the Tamil Nadu Minor Minerals Concessions Rules and the conditions of lease. Rule 36-A contemplates collection of seigniorage fee, levy of penalty on any person for contravention of the provisions of the Act and penal action.

11. Rule 36-A(5) contemplates that whenever a person contravenes any provision other than sub-rule(1) of Rule 10 of these rules or the conditions of a quarrying permit or a quarrying lease granted under these rules, the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer, as the case may be, shall, after giving notice, charge that person and recover from him enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of (twenty-five thousand rupees) or in the alternative, such person shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of continuing contravention, with additional fine, which may extend to five hundred rupees for every day, during which such contravention continues after conviction for the first such contravention.

12. As per Condition No.12 of the lease agreement, the officials of the Mines and Revenue Department can inspect the mines and verify the registers any time and it is not necessary to give any advance notice to the petitioner before inspection. It is evident from the pleadings that the authorities have inspected the quarry site and noted down the violations, viz., the petitioner has quarried in an unauthorised site, particularly the river promboke. It is further evident that for the violations noticed, the petitioner had also been warned. Therefore, there is sufficient materials available on record for the authorities to come to the conclusion that the petitioner had violated the conditions of lease. As the petitioner has been afforded adequate opportunity, there is no violation of the principles of natural justice. Though the authorities are empowered to recover from the petitioner an enhanced seigniorage fee to a maximum of 15 times of the normal rate, they have demanded seigniorage fee of Rs.77,115/- only and the quantum fixed by the Department is within the permissible limits under the Mines and Minerals Rules. Further, the petitioner has not availed the alternative remedy provided under Rule 36-C of the Tamil Nadu Minor Minerals Concessions Rules. Courts have consistently held that questions of fact cannot be gone into in writ proceedings, unless the finding is perverse.

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13. In the above circumstances, I do not find any irregularity in the impugned order passed by the authorities concerned. Therefore, this writ petition fails and is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

gs.

To

1. The Revenue Divisional Officer,
   Thenkasi,
   Tirunelveli Dist.

2. The Assistant Director of Mines,
   Dept. of Geology and Mines,
   Tirunelveli.

+1cc to Mr.M.Suresh Kumar, Advocate Sr 50654
+1cc to Govt. Pleader Sr 50036

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